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OFFICE OF PETITIONS

In re Application of	:	
Lou CHAUVIN et al.	:	
Application No. 10/050,979	:	DECISION ON PETITION
Filed: January 18, 2002	:	
Attorney Docket No. 83304DF-P	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 03, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed March 05, 2008, which set a shortened statutory period for reply of three (3) months. A one (1) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b). Accordingly, the application became abandoned on July 06, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of \$1,620.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the final Office Action of March 05, 2008 is accepted as having been unintentionally delayed.

37 CFR 1.137(b)(3) requires a statement that “the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.” Since the statement appearing in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason undersigned at (571)-272-4231.

This application is being referred to Technology Center AU 2452 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

A handwritten signature in black ink, appearing to read "Michelle R. Eason", is written over the typed name.

Michelle R. Eason
Paralegal Specialist
Office of Petitions